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Glenn Ballman

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EXAMINER

GREGG, MARY M

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/604,766	Applicant(s) BALLMAN, GLENN	
	Examiner MARY GREGG	Art Unit 4124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/03/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

MMG

DETAILED ACTION

1. Claims 24-32 have been examined.
2. The following is a Final Office action in response to communications received January 3, 2008. Claims 1-23 have been canceled. Claims 24-32 have been added. Therefore, claims 24-32 are pending and addressed below.

Specification

3. The disclosure is objected to because, the use of the trademark SUPER DOT, COMPUSERVE, PRODIGY, AMERICAN ONLINE, MICORSOFT INTERNET EXPLORER, NETSCATPE NAVIGATOR, LYNX, MOSAIC, WINDOWS 95, (p 0007, 0008, 0009, 0010), and LINUX (p 0059, 0060, 0063) has been noted in this application. A trademark should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks. Capitalize each letter of the word in the bracket or include a proper trademark symbol, such as TM or © following the word.

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code in paragraphs 0035 and 0044. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

The disclosure is objected to because of the following informalities: In paragraph 0055 the term "market" is misspelled. Appropriate correction is required.

Claim Objections

4. Claim 29 is objected to because of the following informalities:

In reference to Claim 29:

It has been noted that Claim 29 numbering has been duplicated. For compliance requirements by rule 1.126 the examiner has corrected the duplicate numbering of claim 29 and has corrected the numbering of the claims that followed. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 29-31 have been renumbered as claims 30-32.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 24-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 is directed toward the statutory category of a system. However, the body of the claim encompasses "computer software" per se (or functional descriptive

material). Therefore, it is not clear how “computer software” constitutes the statutory category of a system. Clarification is required. For examination purposes the examiner has construed the system to contain hardware with a computable readable medium which executes the instructions of the software.

Claims 25-32 depend from claim 24 and contain the same deficiencies. Therefore, claims 26-32 are also rejected under 35 USC 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Clarification is required. For examination purposes the examiner has construed the system to contain hardware with a computable readable medium on which executes the instructions of the software.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 24-32 are rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.

Claim 24 is directed toward “computer software” which encompasses a program per se (or functional descriptive matter) which not in a statutory category. The claim does not recite this “software program” recorded on a computer readable medium, employed as a computer component, etc. Therefore, it is respectfully submitted that claim 24 is non-statutory because, as per MPEP 2106.01 [R-6], descriptive material is non-statutory when claimed as descriptive material per se and not functionally and structurally interrelated to a tangible medium.

Claims 25-32 depend from claim 24 and do not cure the deficiencies set forth above. Therefore, claims 25-32 are also rejected for being directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 24-27 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pub 2004/0088242 by Ascher et al. (Ascher) and further in view of US Pub No. 2002/0138417 A1 by Lawrence et al. (Lawrence).

In reference to Claim 24:

Ascher teaches:

(new) A securities reporting system comprising; a system with a computer processor means for processing data (Ascher; para 00063 lines 12-18); storage means for storing said data on a storage medium (Ascher; FIG. 1 ref # 124, 121; para 0041 lines 5-7, para 0063 lines 9, 12-13) communication means for transmitting data in a secure environment to and from various remote locations (para 0013 lines 9-13, para 0041 lines 2-9); and computer software means for a market order book (para 0028 lines 1-3, 9-11, 14-17) that displays the rights holder of the security being traded where said rights holder (para 0030 lines 8-13) ... a means for monitoring the modification of trade

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data in respective trade records which are created by said computer software...(para 0015, para 0025 lines 5-13, para 0026 lines 3-5, 8-11).

Ascher does not teach:

is verified through a verification means, ...means having a flagging means which is flagged if trade record meet a certain criteria where said flagging means is transparent to a user.

Lawrence teaches:

is verified through a verification means (para 0051 lines 6-9, 11-12), ...means having a flagging means which is flagged if trade record meet a certain criteria where said flagging means is transparent to a user (para 0094 lines 7-9, para 0060 lines 1-4, 8-11).

Both Ascher and Lawrence teach identification of rights holder (or beneficial owner). ((Ascher) para 0030 lines 8-10, (Lawrence) para 0057 lines 10-17). Although Ascher does not explicitly teach "rights holder is verified through a verification means", Ascher does teach "orders have associated there with predetermined trading data, such as a member identification, both for "the originating member and the counter party...identity of individual completing the order" (Ascher; 0030 lines 8-10, 12). It would have been obvious at the time of the invention combine the teachings of Ascher et al. and Lawrence et al. to allow the user to ascertain and verify the identity of the rights holders as in Lawrence because Lawrence offers the advantage of managing risk associated with regulation including identification for protection from fraud. ((Lawrence) para 0014, 0017 and 0020).

In reference to Claim 25:

Ascher teaches:

(new) A system, as claimed in claim 24 (see rejection of claim 24 above),
...system will send said information to a regulatory body (Ascher para 0044 lines 6-7)

Ascher does not teach:

...further comprising, when said flagging means is flagged then said...

Lawrence teaches:

...when said flagging means is flagged then said...(para 0032 8-9, para 0060
lines 5-7, 8-11, para 0061 lines 1-5)...

Both Ascher and Lawrence teach compliance with regulatory bodies by submitting required information to those said regulatory bodies and regulatory obligation. ((Ascher) para 0010; (Lawrence) para 0004 lines 1-2). Ascher teaches "third party regulators performs audit trail compliance monitoring executed trades" ((Ascher) para 0016 lines 28-29). Whereas Lawrence teaches: "managing risk associated with government regulation" (abstract) and "facilitating the identification, investigation...and regulatory risks: ((Lawrence) para 0002) as well as the concerns of regulators with fraud ((Lawrence) para 0003).

Although Ascher does not teach "flagging", Ascher does teach "performs audit trail compliance monitoring...based on information contained in the audit trail" ((Ascher) para 0016 lines 22-25). Lawrence teaches "ongoing monitoring can result in an alarm or other alert being sent to one or more appropriate users ((Lawrence) para 0094). In order for Ascher to note compliance issues in an audit, it would be necessary for a

"alert" as taught by Lawrence to be set up so that appropriate anomalies' could be separated in the audit. Therefore it would have been obvious for one of ordinary skill in the art at the time of invention to utilize a component that would separate the information in an audit an element to distinguish information as taught by Lawrence.

Lawrence also teaches of regulatory reporting obligation, signifying a need for Ascher to have a system or method of noting certain criteria required for audit-trail and compliance monitoring on executed trades and to send such required information to required regulatory bodies ((Ascher) para 0044, (Lawrence) para 0003 lines 3-11). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Ascher et al. and Lawrence to allow the user to ascertain and verify the identity of the rights holder as in Lawrence because Lawrence offers the ad'antage of managing risk associated with regulation ((Lawrence) para 0014, 0017, 0020) including identification for protection from fraud as a supplement to the auditing feature of the regulatory authority of Ascher.

In reference to Claim 26:

(new) A system, as claimed in claim 24 (see rejection of claim 24 above), in which said system is processed in a client server system (Ascher; FIG. 1; para 0018 lines 1-3, para 0039 lines 5-7).

In reference to Claim 27:

(new) A system according to claim 24 (see rejection of claim 24 above), in which said system is connected to through the Internet ((Ascher) FIG. 1; para 0024 line 7).

In reference to Claim 32:

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Ascher teaches:

(new) A system according to claim 24 (see rejection of claim 24 above), in which said system is used by ((Ascher) para 0016 lines 32-35)

Ascher does not teach:

regulators to look for fraud (Lawrence) para 0017 lines 5-10).

Note: Although Ascher does not specifically teach of fraud, Ascher does teach “audit trail compliance monitoring” with third party regulator ((Ascher) para 0016 lines 32-25).

One of the main motivations of an audit is to monitor compliance requirements of which fraud is one of as taught by Lawrence ((Lawrence) para 0017 lines 5-10). It would have been obvious to one of ordinary skill in the art at the time of the invention for the regulatory part to use the audit trail compliance to ascertain if fraud is being practiced.

11. Claims 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pub No. 2004/0088242 A1 by Ascher et al. and US Pub No. 2002/0138417 A1 by Lawrence as applied to claim 24 above, and further in view of US Pub No. 2003/0009411 A1 by Ram et al. (Ram).

In reference to Claim 28:

Ascher and Lawrence teach:

(new)A system according to claim 24 (see rejection of claim 24 above), ...

Ascher and Lawrence do not teach:

in which said system has a Portfolio Summary screen which displays portfolio information for a given buyer or seller

Ram teaches:

in which said system has a Portfolio Summary screen which displays portfolio information for a given buyer or seller (para 0052, para 0078 lines 5, para 0430 lines 8-10; FIG. 37, FIG 40).

Although Ascher and Lawrence do not teach a "portfolio summary screen", Ascher does teach "matching orders...futures contracts" ((Ascher) para 0024 lines 8-12) as well as "aggregating volume" ((Ascher) para 0025).

For examining purposes the examiner is going to take the common definition of portfolio to be combined holding of more than one stock, bond, commodity, real estate investment, or other asset by and individual or institutional investor as defined by the Dictionary of Finance and Investment Terms 5th edition by John Downes, A.B. and Jordan Elliot Goodman, A.B., M.A..

Ascher implicitly teaches toward multiple holding i.e. portfolios. Whereas Ram explicitly teaches the display of a "portfolio" ((Ram) FIG. 37, FIG. 40). Ascher explicitly teaches trade display, depth of market, price reporting, displayed margin requirements ((Ascher) para 0025 lines 5-15). Both Ram and Ascher teach displaying market information, therefore it would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Ram and Ascher and provide in the display features portfolio summaries.

In reference to Claim 29:

Ascher and Lawrence teach:

(new) A system according to claim 28 (see rejection of claim 28 above),

Ascher and Lawrence do not teach:

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in which said system has a charting display, which charts how well a portfolio is doing

Ram teaches:

in which said system has a charting display, which charts how well a portfolio is doing (para 0290 lines 3-6; FIG. 12, FIG. 27, FIG. 28, FIG. 35, FIG. 37).

Both Ascher and Ram are directed toward an order book for stock investments ((Ascher) para 0013 line 11, 10-13, para 0014 lines 5-7, (Ram) para 0085 lines 5-6, para 0434 line 2). Additionally both teach trade display ((Ascher) para 0025 lines 5-6, (Ram) para 0449 lines 6-7). Although, Ascher does not explicitly teach displaying charts on securities, Ascher does teach “view all available prices and aggregate volume in a specific contract, series or strategy” ((Ascher) para 0025 lines 10-15). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ascher and Ram to include the graphical order book as taught by Ram for the charting of information on stocks in a portfolio.

In reference to Claim 30:

(new) A system according to claim 29 (see rejection of claim 29 above), in which charting can be for 1, 5 or 30 days, or 1 year, 3 years or 5 years ((Ascher) para 0030 lines 11-14).

In reference to Claim 31:

Ascher, Lawrence and Ram teach:

(new) A system according to claim 28 (see rejection of claim 28 above), in which said Portfolio Summary in the preferred will display ((Ram) para 0078 line 3, para 0430

lines 8-10, para 0468 1-4, FIG. 42) the Equity Positions and Securities positions held on the Portfolio displayed ((Ascher) para 0027 lines 7-11, ((Ram) FIG. 42).

Equity position is an investors stake in a particular security or market such as a long position equals the number of shares owned whereas a short position equals the number of shares owed by an individual. Both Ascher and Ram teach displaying securities owned.

Response to Amendment

12. Applicant's amendments to the claims are sufficient to overcome the 35 USC 101 rejections and the 35 USC 112, second paragraph, rejections set forth in the previous office actions.

Response to Arguments

13. Applicant's arguments filed 01/03/2008 have been fully considered but they are not persuasive. In the remarks, the applicant argues that (1) "flagging a record in the software world is different from setting an alarm or alarm alert". (2) The applicant argues that "flagging is setting a physical change in the data which is set until the data is unflagged and (3) that flagging is unique and novel.

In response to the argument (1) although the actual coding is different between an alert and setting up a flagged the results are not. An alert in programming is an asynchronous notification sent by one thread to another. An alert interrupts the thread at defined point and cause it to execute an asynchronous procedure call whereas a flagging depending on its use can be a code, embedded in data, that identifies some condition such as the comparing of two values; which **signals a change** in status of a

particular condition. Both "flagging" or setting an "alert" are a response to a change in status.

In response to argument (2) that "flagging is setting a physical change in data which is set until the data is unflagged. An alert interrupts the thread at "defined" points in its execution causing it to execute an asynchronous procedure call. If the defined points are never redefined it could also continue sending the call. Therefore the two coded functions essentially perform the same function.

In response to argument (3) that flagging is unique and novel. Flagging is defined in Mocomsoft Press Computer Dictionary Third edition, it is a well known computer embedded code.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Pub No 2004/0243492 A1 by Korisch is cited as it is directed toward graphing and displaying individual stocks or components for a portfolio of stocks. Additionally, US Pub No. 2005/0075966 A1 by Duka is cited for teaching graphical representation of financial instruments and an analysis tool.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY GREGG whose telephone number is (571)270-5050. The examiner can normally be reached on 4/10.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272 - 6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Mary Cheung/

Primary Examiner, Art Unit 3694